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SIPDIS

SECSTATE FOR USTR
USTR FOR BUD CLATANOFF, USDOL FOR JORGE PEREZ-LOPEZ, DRL/IL
FOR GREG MAGGIO, EB FOR AMY HOLMAN

E.O. 12958: N/A

TAGS: [ELAB](#) [PGOV](#) [EC](#)

SUBJECT: LABOR DELEGATION CONSULTATIONS IN ECUADOR

11. (U) Summary. During a September 1-3 visit to Ecuador, an interagency labor delegation met with GoE officials, labor and business representatives and Ecuadorian civil society representatives, fulfilling the Trade Promotion Authority mandate to consult on labor law and practice and begin the fact-finding process necessary to prepare the meaningful labor rights report to Congress. Their meetings helped clarify the significant labor rights challenges facing the GoE, including possible labor code reform. End Summary.

Background

12. (U) The USG delegation consisted of William Clatanoff, Assistant US Trade Representative for Labor Affairs, USTR; Jorge Perez-Lopez, Associate Deputy Under Secretary for International Affairs, DOL; Amy Holman, Trade Economist, Bureau of Economic and Business Affairs, DOS; Greg Maggio, Foreign Affairs Officer, DRL, DOS; and Carlos Romero, International Economist, International Labor Affairs Bureau, DOL. The delegation met with the Ambassador and selected Country Team members shortly after their arrival and were accompanied to all meetings by LabOff, and joined in Quito by PolCouns, and in Guayaquil by CG. The Embassy issued a press release about the visit but press coverage was light on substance, with the exception of a positive article in major national daily "El Comercio" on September 4.

Private Sector Wants Labor Flexibility

13. (SBU) On September 1 in Quito the delegation met with members of the Chambers of Commerce and Industry. Chamber leaders offered a power point presentation showing what they feel to be disadvantages (especially when compared to neighboring countries) in the current labor laws for business owners in Ecuador. Some of the labor laws they feel are too rigid include the 40-hour work week and 13-hour work day, the cost of contracting a worker, cost of firing a worker (including company retirement) and the 15% annual profit-sharing required by law. As a result, only 3,900 of some 80,000 businesses in Ecuador report profits. To be more competitive, business leaders believe Ecuador needs to lengthen the work week and the work day, and lower costs of hiring and firing workers. The Chambers agreed that if consensus were found in the National Labor Council, it would be much easier to approach the government with a labor reform.

14. (SBU) In Guayaquil on September 3, the delegation met with Alberto Dassum, President of the Chamber of Industry of Guayaquil; Miguel Pena, Alternate President of the same Chamber; and Teodoro Maldonado, Executive Vice President of the Chamber of Commerce of Guayaquil. Chamber leaders in Guayaquil agreed with their counterparts in Quito that more labor law flexibility was needed. Dassum said the workweek should be extended to 44 hours. Some labor laws were part of the Constitution and therefore could not be changed easily. Pena, however, said that if the unions and the business community could jointly propose reforms to Congress, they could serve as an example for the world.

Unions Want Greater Protection

15. (SBU) On September 1, the delegation met with Jaime Arciniegas, President of CEOSL, the largest union federation in Ecuador; Mesias Tatamuez, President of the union federation CEDOCUT and rotating head of the United Workers Front, which includes the five largest labor federations; Santiago Yagual, head of the union federation CTE; and Patricio Contreras of the Solidarity Center (AFL-CIO). The union leaders expressed concern about business community desires to reduce wages and (in the union's view) curtail worker rights in order to be more competitive. The unions have proposed their own reforms of the labor code. In their view, real collective bargaining does not exist in the country. They believe workers currently have little protection on paper and none in practice, with no guarantee of stability. While laws such as profit-sharing exist, CEOSL believes that no more than 220 unionized workers and 4,000

workers overall actually receive it. The unions are also worried about worker rights in the flower sector where there are serious health problems arising from the use of pesticides without proper protection and child labor issues. They believe the MOL needs to do more to monitor health and safety standards in the flower and banana sectors.

16. (SBU) The unions estimate that 75% of Ecuador's workers are hired through subcontracting. They feel the MOL needs to do more to regulate subcontracting. The union leaders did not express much faith in the current Minister of Labor and his Ministry; Arciniegas said the country would be better off without the Ministry. The unions believe the ILO should play a more active role helping the GoE comply with international labor standards. Union leaders estimate union membership at less than one percent; business leaders put union membership at five percent or lower. The union leaders believe the Gutierrez government lacks the credibility to sign a Free Trade Agreement with the U.S. at this time.

MOL Committed to Reform

17. (SBU) Also on September 1, the delegation met with the Minister of Labor Dr. Raul Izurieta, Vice Minister Beatriz Garcia, and several other key officials from the MOL. The Minister discussed the possibilities of labor reform, yet most of his suggestions seemed to fall on the side of making it easier to hire and fire workers. The Minister agreed with the Chambers that the current labor laws are over-protective of workers and need to be changed so businesses can be more competitive. The Minister said he would introduce reforms to allow payment of workers per hour, changing vacation requirements and altering company retirement laws. Currently, after 20 years of work, a worker is entitled to an additional retirement package. Because of this, many employers fire their workers just before they reach this threshold. The Minister said he believed it would be impossible to lower the 30 person minimum requirement to form a union.

18. (SBU) The Minister said he has asked the ILO and two Ecuadorian lawyers to work on proposals for labor code reform. He has also asked the ILO to identify an international expert who could help. Izurieta claimed it has had some success in dealing with child labor in the banana sector with the tripartite Social Banana Forum. They are also considering supporting a similar program for the flower sector. The Minister said that flower and agricultural workers prefer to resolve their conflicts directly, without the interventions of union federations. Minister Izurieta said three more child labor inspectors would be named soon, in addition to the 19 that are already in place, to comply with the labor law that requires one inspector per province.

19. (SBU) The delegation met on September 2 with the newly-created National Labor Council. Representatives from the union federations, the Chambers of Commerce and Industry, the small business community, and artisans attended. CEOSL union representative Jose Chavez expressed concern that ILO conventions still were not being lived up to. Ramiro Leon of the Chamber of Industry of Pichincha province said both unions and businesses share the same goal which is to increase jobs in the formal sector and that if change is made through consensus, it could benefit everyone.

110. (SBU) With the US delegation later that evening, the Minister said he had spoken earlier with Congressman Andres Paez (head of the Labor Commission in Congress) and would include him in future meetings of the National Labor Council (see para 14 on the delegation meeting with Paez). The Minister said he had reached an agreement with Paez that the Minister would table reform proposals in the National Labor Council by the end of September. He told delegation member Clatanoff that he intended to urge the Council to engage in discussions about those reforms after national local elections on October 17, with a view toward submitting revised changes to Congress by early November.

Trade Ministry Willing to Help With Industry

111. (SBU) In a meeting on September 2, with Minister of Trade Ivonne Baki and Christian Espinosa, Under Secretary of Foreign Commerce and Integration and Ecuador's Chief FTA negotiator, Mr. Espinosa said both business and labor are hesitant to re-open the labor code issue as it is a Pandora's Box; both sides fear that they will end up worse off than they were to begin with. Minister Baki said it would be impossible to lower the number of 30 workers needed to form a union, even though ILO reports suggest this number is too high. (The number was raised from 15 to 30 in a 1991 reform.) Mr. Espinosa said it was important to make clear to the National Labor Council that this could be an opportunity where both sides could gain and to have them look at positive examples of labor reform from other countries, like Morocco.

ILO Willing to Help

12. (SBU) On September 2, the delegation met with Ricardo Hernandez Pulido, ILO's Regional Director from Lima; Adolfo Ciudad, the ILO's labor specialist in Lima; Jorge Viteri, consultant to the ILO in Quito; and Magne Svartbekk, Director of ILO/IPEC's program in Ecuador. Mr. Hernandez said the Ministry of Labor had requested the ILO institutionalize social dialogue on labor reform. He expressed concern about lack of communication between the ILO and the Inter-American Development Bank and World Bank in support of labor code reform. The delegation agreed that it would be logical for the ILO to play an important role in creating a foundation for a modern, balanced labor code reform.

13. (SBU) Magne Svartbekk spoke to the group about IPEC's child labor program which started seven months ago. He has insisted that the program be tripartite including the Ministry of Labor, Ministry of Government, Police, Unions and Chambers of Commerce. IPEC played a role in organizing training for the child labor inspectors, but Mr. Svartbekk believes the new inspectors are still weak and lack resources. He is also working on a reform proposal to harmonize the labor code with the more recent Code on Children and Adolescents, which has stronger protections against child labor.

Congress Takes Middle Course

14. (SBU) On September 2, the delegation met with Congressman Andres Paez, member of the Democratic Left party, and head of the Labor Commission in Congress. Paez claimed that while the businesses and trade unions have opposing points of view, his viewpoint is only the interest of the country as a whole. Paez said he did not think freedom of association was a problem in Ecuador. He believes rules on collective bargaining in the private and public sectors should be different, to prevent excessive salary increases from burdening the national budget. Paez told the delegation that currently no political party supports lowering the number of 30 workers needed to form a union. Paez also said he believed that subcontracting has been abused by employers to avoid their responsibilities to workers, and has introduced legislation to harmonize the labor code with the stronger Code for Children and Adolescents. Paez said it is important for labor code reforms to have social legitimacy. He agreed with the delegation about the importance of ensuring that any reforms are ILO-consistent. Paez also said he believed that to succeed, labor reforms must have social legitimacy. The National Labor Council could help build that legitimacy for labor law reform that can gain Congressional approval. He noted that the Congressional Labor Commission is diverse and includes seven Congress members -- two from the Democratic Left party, two from the Social Christian Party, and one each from the Communist party, the Ecuadorian Roldosista Party, and the National Institutional Renewal Action Party.

Going Bananas

15. (SBU) On September 3, the group traveled to Guayaquil where they met with Sergio Seminario, a former Minister of Agriculture and head of SONICONTI, a group that analyzes international banana markets, and owner of a banana plantation. Seminario said that Ecuadorian labor law does not respond to rural realities. For example, a cow needs to be milked seven days a week, not only between Monday and Friday as the labor code allows. Rigidities in the law have forced banana producers to resort to subcontracting. Seminario also claimed that it was not in producer interests to get certified as organic producers or labor standard compliant, because they did not get a better price in the international market as a result.

16. (SBU) The group also met with the Banana Social Forum in Guayaquil. The Forum is active in three provinces: Guayas, Los Rios and El Oro. Guillermo Touma, head of the trade union FENACLE and a Forum member, said the creation of the Forum was a positive outcome of Human Rights Watch's 2003 report on the banana sector in Ecuador. Touma said conditions for adult workers need to be improved before child labor can be eradicated. Touma said of 200-300,000 direct banana employees, only 1,350 were unionized. Touma said "union" is still a "taboo" word in Ecuador. A representative from the Noboa banana company claimed that over 1,800 unionized workers exist on just one plantation, Hacienda Clementina. Touma in a later meeting charged that the Noboa union is a "yellow" union controlled by management.

17. (SBU) According to Maria Antonieta Reyes of the Forum, a second round of child labor inspections began August 4, 2004. She did not discuss the first round of inspections in depth.

The Foro has helped find monitors to accompany the inspectors when they go out on inspections. Reyes said that there was just one case of a minor under the age of 15 working. In this case, it was a 14-year old father of two children. Reyes said none of the minors were at any health risk and only worked one to two days a week.

118. (SBU) The delegation also met in Guayaquil on September 3 with Guillermo Touma, president of the FENACLE union federation, Jaime Arciniegas, President of CEOSL. and Gina Carangui, a former banana worker. Touma said banana workers receive a monthly salary of \$80-140 and work over ten hours a day. This is far from enough to purchase the basic basket of goods which costs \$380 a month. Employers use six-month contracts for banana workers, rotating them from one subcontractor to another, to avoid having to pay social security or other benefits. Touma said there is no government commitment to respect labor rights, including freedom of association. Banana producers are too strong politically and economically for the government to control them. As evidence, they cited the government's weak investigation and prosecution of anti-union violence at the Los Alamos plantation, owned by prominent businessman and politician, Alvaro Noboa. Touma said a labor dispute had been resolved the day before at La Viscaya plantation, where FENACLE was able to have workers reinstated after being fired for unionizing. The businesses gave them a new contract and social security but still would not allow them to unionize. Arciniegas said he does not want the unions to be an obstacle to commerce, but wants the GoE to permit the formation of horizontal (industrial) unions, especially in the banana, flower and sugar sectors.

Comment: The Way Ahead

119. (SBU) Labor code reform will be very difficult politically, and Izurieta may be overly optimistic about his timetable for reform. Both labor and management want changes, but want different (not wholly irreconcilable) things. The Minister's priorities seem heavily weighted toward business interests. We can help by urging him to work together with business and labor, the ILO and Congress to produce a balanced and politically feasible reform package. The National Labor Council appears an ideal venue for any labor-business accord to be blessed by both sectors before going to Congress. Meanwhile, we continue to press for issuance of the long-delayed Presidential Decree on subcontracting.

KENNEY